



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 00044-00
7 August 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: CDR [REDACTED] USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

- Encl: (1) DD Form 149 dtd 2 Dec 99 w/attachments
(2) NAVIG N66 memo dtd 29 Dec 99 w/enclosures
(3) PERS-61 memo dtd 21 Mar 00
(4) PERS-311 memo dtd 19 May 00 w/amendment
(5) Counsel ltr dtd 26 Jul 00
(6) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the regular fitness report for 1 September to 23 December 1998, a copy of which is at Tab A. He further requested that the two concurrent fitness reports provided at Tabs 1 and 2 to his application, for 1 December 1997 to 10 June 1998 and 11 June to 23 December 1998, be filed in his record to replace the contested report. Finally, Petitioner requested that he be awarded the Meritorious Service Medal (MSM). The Board did not consider this request, as he has not exhausted his administrative remedies. He may submit the recommendation that he be awarded the MSM to the immediate superior in command (ISIC) of the officer who submitted the contested fitness report, citing the circumstances of his case.

2. The Board, consisting of Messrs. Bishop, Pauling and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 3 August 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

- a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. At enclosure (2) is a command climate assessment requested by the Naval Inspector General (NAVIG), with a NAVIG cover letter reflecting that the command climate under the commanding officer who submitted the contested regular fitness report was "well below par, which will support petitioners' claims that many were unfairly treated in the evaluation process."

c. In correspondence attached as enclosure (3), the Navy Personnel Command (NPC) office having cognizance over professional relationships has recommended that the contested regular fitness report be removed on the basis of racial bias.

d. In correspondence attached as enclosure (4), the NPC office having cognizance over fitness report matters also recommended approving Petitioner's request to remove the contested regular fitness report, on the basis of the command assessment at enclosure (2). Initially, they recommended against filing the two concurrent fitness reports provided with the petition on the ground that they were not acceptable for filing without the signature of the regular reporting senior. They later amended this portion of their opinion to state that if the Board determined Petitioner "was subject to discrimination," they would have no objection to placing the concurrent fitness reports in his record.

e. Petitioner's counsel's letter at enclosure (5) disputed the recommendation, in the original advisory opinion at enclosure (4), against filing the concurrent reports.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (3) and the amended opinion at enclosure (4), the Board finds the existence of an injustice warranting the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following regular fitness report and related material:

Date of Report	Reporting Senior	Period From	of Report To
99Jan22	CAPT ██████████ SN	98Sep01	98Dec23

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That the concurrent fitness reports for 1 December 1997 to 10 June 1998 and 11 June to 23 December 1998, to be forwarded by this Board, be filed in place of the regular report to be removed.


d. That Petitioner's naval record be corrected further by inserting a memorandum, containing appropriate identifying data, stating that the concurrent fitness reports for 1 December 1997 to 10 June 1998 and 11 June to 23 December 1998 have been filed by order of the Secretary of the Navy, without signature by the regular reporting senior.

e. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.


f. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEFFER
Executive Director

1. Name (Last, First MI Suffix) [REDACTED]				2. Grade/Rate CDR		4. CSI 114-00	
5. ACT <input checked="" type="checkbox"/>		TAR <input type="checkbox"/>		6. UIC 68073		7. Ship/Station [REDACTED]	
8. Promotion Status REGULAR		9. Date Reported 97DEC01		10. Periodic <input type="checkbox"/>		11. Detachment of Individual <input type="checkbox"/>	
12. Reporting Senior <input checked="" type="checkbox"/>		13. Special <input type="checkbox"/>		14. From: 97DEC01		15. To: 98JUN10	
16. Not Observed Report <input type="checkbox"/>		17. Regular <input type="checkbox"/>		18. Concurrent <input checked="" type="checkbox"/>		19. Ops Cdr <input type="checkbox"/>	
20. Physical Readiness P/WS		21. Billet Subcategory (if any) NA		22. Reporting Senior (Last, FI MI) [REDACTED]		23. Grade CAPT	
24. Desig [REDACTED]		25. Title CO		26. UIC [REDACTED]		27. SSN [REDACTED]	
28. Command employment and command achievements. Manage telecommunications systems and facilities for Navy and Defense Information Systems Agency. Manages NAVSECGRU cryptologic functions for CNO, CINCPACFLT, DIRNSA and CMSG. Industrial Hygiene Survey. 6 Echelon IV commands. Received Golden Anchor Award.							
29. Primary/Collateral/Watchstanding duties. (Enter primary duty abbreviation in box.) CO Commanding Officer-7. Responsible for 12 officer, 280 enlisted 6 civilian personnel, \$2.8M annual budget and \$3M plant property. Responsible for telecommunications, telephone and internet service for 21 island commands/activities. Managed NAVSECGRU Cryptologic functions.							
For Mid-term Counseling Use. (When completing FITREP, enter 30 and 31 from counseling record, sign 32.)				30. Date Counseled NOT REQ		31. Counselor	
32. Signature of Individual Counseled							
PERFORMANCE TRAITS: 1.0 - Below standards/not progressing or UNSAT in any one standard; 2.0 - Does not yet meet all 3.0 standards; 3.0 - Meets all 3.0 standards; 4.0 - Exceeds most 3.0 standards; 5.0 - Meets overall criteria and most of the specific standards for 5.0. Standards are not all inclusive.							
PERFORMANCE TRAITS	1.0* Below Standards	2.0 Pro- gressing	3.0 Meets Standards	4.0 Above Standards	5.0* Greatly Exceeds Standards		
33. PROFESSIONAL EXPERTISE: Professional knowledge, proficiency, and qualifications. NOB <input type="checkbox"/>	<ul style="list-style-type: none"> - Lacks basic professional knowledge to perform effectively. - Cannot apply basic skills. - Fails to develop professionally or achieve timely qualifications. 	<input type="checkbox"/>	<ul style="list-style-type: none"> - Has thorough professional knowledge. - Competently performs both routine and new tasks. - Steadily improves skills, achieves timely qualifications. 	<input type="checkbox"/>	<ul style="list-style-type: none"> - Recognized expert, sought after to solve difficult problems. - Exceptionally skilled, develops and executes innovative ideas. - Achieves early/highly advanced qualifications. <input checked="" type="checkbox"/>		
34. EQUAL OPPORTUNITY: Fairness, respect for human worth. NOB <input type="checkbox"/>	<ul style="list-style-type: none"> - Displays personal bias or engages in harassment. - Tolerates bias, unfairness or harassment in subordinates. - Lacks respect for EO objectives. - Interferes with order and discipline by disregarding rights of others. 	<input type="checkbox"/>	<ul style="list-style-type: none"> - Always treats others with fairness and respect. - Does not condone bias or harassment in or outside of workplace. - Supports Navy EO objectives. - Contributes to unit cohesiveness and morale. 	<input checked="" type="checkbox"/>	<ul style="list-style-type: none"> - Admired for fairness and human respect. - Ensures a climate of fairness and respect for human worth. - Pro-active EO leader, achieves concrete EO objectives. - Leader and model contributor to unit cohesiveness and morale. <input type="checkbox"/>		
35. MILITARY BEARING/CHARACTER: Appearance, conduct, physical fitness, adherence to Navy Core Values NOB <input type="checkbox"/>	<ul style="list-style-type: none"> - Consistently unsat appearance. - Unsatisfactory demeanor/conduct. - Unable to meet one or more physical readiness standards. - Fails to live up to one or more Navy Core Values: HONOR, COURAGE, COMMITMENT 	<input type="checkbox"/>	<ul style="list-style-type: none"> - Excellent personal appearance. - Excellent demeanor or conduct. - Complies with physical readiness program, within all standards. - Always lives up to Navy Core Values: HONOR, COURAGE, COMMITMENT. 	<input checked="" type="checkbox"/>	<ul style="list-style-type: none"> - Exemplary personal appearance. - Exemplary representative of Navy. - Excellent or outstanding PRT. A leader in physical readiness. - Exemplifies Navy Core Values: HONOR, COURAGE, COMMITMENT. <input type="checkbox"/>		
36. TEAMWORK: Contributions to team building and team results. NOB <input type="checkbox"/>	<ul style="list-style-type: none"> - Creates conflict, unwilling to work with others, puts self above team. - Fails to understand team goals or teamwork techniques. - Does not take directions well. 	<input type="checkbox"/>	<ul style="list-style-type: none"> - Reinforces others' efforts, meets personal commitments to team. - Understands team goals, employs good teamwork techniques. - Accepts and offers team direction. 	<input checked="" type="checkbox"/>	<ul style="list-style-type: none"> - Team builder, inspires cooperation and progress. - Talented mentor, focuses goals and techniques for team. - The best at accepting and offering team direction. <input type="checkbox"/>		
37. MISSION ACCOMPLISHMENT AND INITIATIVE: Taking initiative, planning, prioritizing, achieving mission. NOB <input type="checkbox"/>	<ul style="list-style-type: none"> - Lacks initiative. - Unable to plan or prioritize. - Does not maintain readiness. - Fails to get the job done. 	<input type="checkbox"/>	<ul style="list-style-type: none"> - Takes initiative to meet goals. - Plans/prioritizes effectively. - Maintains high state of readiness. - Always gets the job done. 	<input type="checkbox"/>	<ul style="list-style-type: none"> - Develops innovative ways to accomplish mission. - Plans/prioritizes with exceptional skill and foresight. - Maintains superior readiness, even with limited resources. - Gets jobs done earlier and far better than expected. <input checked="" type="checkbox"/>		

1. Name (Last, First MI Suffix)		2. Grade/Rate		3. Designation		4. SSN	
PERFORMANCE TRAITS		1.0* Below Standards	2.0 Progressing	3.0 Meets Standards	4.0 Above Standards	5.0 Greatly Exceeds Standards	
38. LEADERSHIP: Organizing, motivating and developing others to accomplish goals.	<ul style="list-style-type: none"> - Fails to motivate, train or develop subordinates. - Fails to organize, creates problems for subordinates. - Does not set or achieve goals relevant to command mission. - Lacks ability to cope with or tolerate stress. - Inadequate communicator. - Tolerates hazards or unsafe practices. - Does not attend to welfare of subordinates. 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> - Effectively motivates, trains and develops subordinates. - Organizes successfully, solves problems as they occur. - Sets/achieves useful, realistic goals which support command mission. - Performs well in stressful situations. - Clear, timely communicator. - Ensures safety of personnel and equipment. - Routinely considers subordinates' personal and professional welfare. 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> - Inspiring motivator and trainer, consistently builds winners. - Superb organizer, great foresight, gets ahead of problems. - Leadership achievements dramatically further command mission. - Perseveres through the toughest challenges and inspires others. - Exceptional communicator. - Makes subordinates safety-conscious, maintains top safety record. - Constantly improves the personal and professional lives of others.
NOB <input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
39. TACTICAL PERFORMANCE: (Warfare qualified officers only) Basic and tactical employment of weapons systems.	<ul style="list-style-type: none"> - Has difficulty attaining qualification expected for the rank or experience. - Has difficulty in ship(s), aircraft or weapons systems employment. Below others in knowledge and employment. - Warfare skills in specialty are below standards compared to others of same rank and experience. 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> - Attains qualifications as required and expected. - Capably employs ship(s), aircraft, or weapons systems. Equal to others in warfare knowledge and employment. - Warfare skills in specialty equal to other of same rank and experience. 	<input type="checkbox"/>	<input type="checkbox"/>	<ul style="list-style-type: none"> - Fully qualified at appropriate level for rank and experience. - Innovatively employs ship(s), aircraft, or weapons systems. Well above others in warfare knowledge and employment. - Warfare skills in specialty exceed others of same rank and experience.
NOB <input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

40. I recommend screening this individual for next career milestone(s) as follows: (maximum of two)
Recommendations may be for competitive schools or duty assignments such as: LCPO, DEPT CPO, SEA, CMC, CWO, LDO, Dept Head, XO, OIC, CO, Major Command, War College, PG School.

MAJOR
COMMAND

SECNAV/CNO
EA

41. COMMENTS ON PERFORMANCE: * All 5.0 and 1.0 marks must be specifically substantiated in comments. No numerical ranking permitted. Comments must be verifiable. Bold, underlined, italic, or other highlighted type is prohibited. Font must be 10 or 12 pitch (10 to 12 point) only. Use upper and lower case.

*33 - Provided information and documentation which proved critical to CINCPAC, CINCPACFLT, CNFJ, and NSF decision making on use of DSN for Health, Morale, and Welfare calls, developing local policy, and strategy during U.S./British POL-MIL talks. NCTS spearheads Diego Garcia's BLII Working Group and coordinated validation of future requirements for contingency operations for CINCPACFLT's Diego Garcia Reengineering Team. Reduced host/tenants monthly phone bill for official commercial calls in excess of 75 percent by recommending FTS 2000 as an innovative alternative to local carrier. Recruiting poster appearance. Outstanding PRT.

*37 - Exceeded DCAC's 97 percent (98.7 percent) standard for system reliability while providing forward deployed Air Force 2nd Air Expeditionary Group's SIRPNET/JWICS connectivity in support of Operation SOUTHERN WATCH, despite having to hand crank earth terminal to acquire satellite. Resolved problem denying access to island wide Internet by acquiring network engineering support and installing new hardware.

*38 - Offset 30 percent shortfall in E5/E6 personnel through superior leadership/management skills, robust training program, focused vision, and inspiring recognition/future leader development programs. Profound stewardship of quality of life initiative yields esprit de corps/unparalleled high morale.

Promotion Recommendation	NOB	Significant Problems	Progressing	Promotable	Must Promote	Early Promote	44. Reporting Senior Address
42. INDIVIDUAL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
43. SUMMARY	<input checked="" type="checkbox"/>	0	0	0	0	1	

45. Signature of Reporting Senior

46. Signature of Individual Evaluated. "I have seen this report, been apprised of my performance, and understand my right to submit a statement." I intend to submit a statement. ☐ I do not intend to submit a statement. ☒

47. Typed name, grade, command, UIC, and signature of Regular Reporting Senior on Concurrent Report

Date:

1. Name (Last, First MI Suffix)		2. Grade/Rate CDR		3.		4. SSN	
5. ACT <input checked="" type="checkbox"/>	TAR <input type="checkbox"/>	INACT <input type="checkbox"/>	AT/ADSW/ 265 <input type="checkbox"/>	6. UIC 68073	7. Ship/Station NCTS DIEGO GARCIA		8. Promotion Status REGULAR
Occasion for Report 10. Periodic <input type="checkbox"/>				Detachment 11. of Individual <input checked="" type="checkbox"/>		Detachment of 12. Reporting Senior <input type="checkbox"/>	
13. Special <input type="checkbox"/>				Period of Report 14. From: 98JUN11		15. To: 98DEC23	
16. Not Observed Report <input type="checkbox"/>		Type of Report 17. Regular <input checked="" type="checkbox"/>		18. Concurrent <input type="checkbox"/>		19. Ops Cdr <input type="checkbox"/>	
20. Physical Readiness P/WS		21. Billet Subcategory (if any) N/A		22. Reporting Senior (Last, FI MI)		23. Grade CAPT	
24. Desig 1320		25. Title CO		26. UIC		27. SSN	
28. Command employment and command achievements. Manage NAVSECGRU cryptologic functions with operational and technical guidance from CNO, CINCPACFLT, DIRNSA, and COMNAVSECGRU. Managed telecommunications systems and facilities for Navy and Defense Information Systems Agency (DISA).							
29. Primary/Collateral/Watchstanding duties. (Enter primary duty abbreviation in box.) CO ASHORE Commanding Officer-5. Responsible for 12 officers, 280 enlisted, and 6 civilian personnel, as well as a \$2.8 million budget and \$3 million in plant property. Responsible for C4I telephone and internet service for 21 island commands and activities.							
For Mid-term Counseling Use. (When completing FITREP, enter 30 and 31 from counseling record, sign 32.)				30. Date Counseled NOT REQ		31. Counselor	
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37. MISSION AC-COMPLISHMENT AND INITIATIVE: Taking initiative, planning, prioritizing, achieving mission. NOB <input type="checkbox"/>	- Lacks initiative. - Unable to plan or prioritize. - Does not maintain readiness. - Fails to get the job done.	-	- Takes initiative to meet goals. - Plans/prioritizes effectively. - Maintains high state of readiness. - Always gets the job done.	-	- Develops innovative ways to accomplish mission. - Plans/prioritizes with exceptional skill and foresight. - Maintains superior readiness, even with limited resources. - Gets jobs done earlier and far better than expected.		

1. Name (Last, First MI Suffix)		2. Grade/Rate		3.		4. SSN	
		CDR				14-00	
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NOB <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

40. I recommend screening this individual for next career milestone(s) as follows: (maximum of two)
Recommendations may be for competitive schools or duty assignments such as: LCPO, DEPT CPO, SEA, CMC, CWO, LDO, Dept Head, XO, OIC, CO, Major Command, War College, PG School.

MAJOR
COMMAND

EA
CNO/SECNAV

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Technically astute; has been designated as my lead and primary advisor on all C4I and Base Level Information Infrastructure (BLII) issues.

*33 - Eliminated bureaucracy to establish temporary SIPERNET for contingency operations by activating permanent island-wide SIPERNET. Increased island-wide NIPERNET bandwidth by 50%, significantly increasing INTERNET user access, efficiency, and system reliability. Researched, facilitated funding, and installed island-wide Video Tele-Conferencing (VTC), which has the potential to reduce travel costs in excess of 43%.

*37 - Exceeded CLASSIC WIZARD's 95% (99.7%) standard for system availability, SCI communications' 95% (95.9%) standard for reliability, and DISA's 97% (98.3%) standard for system reliability during Operations DESERT THUNDER 98 and DESERT FOX. Received LOA from Air Force's 82nd Reconnaissance Squadron for outstanding SSO and SI COMMS support that was pivotal to success of RIVET JOINT and other Joint Chief of Staff missions.

*38 - Through inspired leadership, executive management, and innovative technical/manpower saving initiatives, prevented adverse affects of a 30% personnel shortfall. Met all challenges despite receipt of E1-E3 personnel with no NECs or required enroute training in lieu of required E5/E6 personnel. Successfully passed NCTAMS PAC's IG inspection.

- Scored outstanding on most recent PRT.

Promotion Recommendation	NOB	Significant Problems	Progressing	Promotable	Must Promote	Early Promote	44. Reporting Senior Address
42. INDIVIDUAL						X	
43. SUMMARY	<input checked="" type="checkbox"/>	0	0	0	0	1	

45. Signature of Reporting Senior	46. Signature of Individual Evaluated. "I have seen this report, been apprised of my performance, and understand my right to submit a statement." I intend to submit a statement. <input checked="" type="checkbox"/> I do not intend to submit a statement.

47. Typed name, grade, command, UIC, and Signature of Regular Reporting Senior on Concurrent Report

Date:



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

24-00
1610
PERS-61/048
21 Mar 00

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: Assistant for BCNR Matters, PERS-00ZCB

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
COMMANDER [REDACTED], USN [REDACTED]

Ref: (a) BCNR PERS-00ZCB memo of 23 FEB 00
(b) Navy IG Ser N6/1582 of 9 SEP 99 with undated cover
letter signed by Navy IG N66
(c) OPNAVINST 5354.1D Navy EO Manual

Encl: (1) BCNR File 00044-00

1. Reference (a) requested an advisory opinion in response to Commander [REDACTED] request to remove the fitness report for the period 1 September 1998 to 23 December 1998 from his service record and replace it with two concurrent fitness reports. Enclosure (1) is returned.

2. Commander [REDACTED] alleges that the fitness report was improperly annotated in Block 41 because it referred to an investigation of him that alleged discrimination and fraternization that had yet to be officially completed and forwarded. He retained a lawyer in pursuit of getting the fitness report removed. In the process of trying to get a copy of the completed investigation referred to in the fitness report, he became aware of an investigation against the reporting senior which substantiated racial bias. Reference (b) is a copy of the Navy Inspector General report. Commander [REDACTED] alleges that racial bias possibly influenced the fitness report in question.

3. The date of the completed investigation report on Commander [REDACTED] is 8 January 1999. The ending date of the fitness report that contains reference to the investigation ends 23 December 1998. I am not the expert on fitness reports; however, the Fitness Report/Evaluation Instruction BUPERSINST 1610.10 states in section N-14, that comments on investigations are prohibited unless the investigation has been completed.

4. Commander [REDACTED] lawyer commented that the investigating officer concluded that Commander [REDACTED] had not fraternized.

Subj: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF
COMMANDER [REDACTED], USN, [REDACTED]

That's not exactly correct. The investigating officer stated that it would be difficult to prove beyond a reasonable doubt the allegations of fraternization and racial discrimination. The investigating officer was confident that there was a preponderance of evidence that indicated there were patterns of behavior that needed to be corrected. He recommended counseling or administrative action, such as fitness report annotations.

5. It is my opinion that the reporting senior probably discussed the investigation results with the investigating officer prior to writing the fitness report. However, the actual report was not submitted to her at least until 8 January 1999 and the ending date of the fitness report is 23 December 1998. I am not in disagreement with the comments but I believe they may be inappropriate for the timing of this particular fitness report. However, I am not the expert on fitness reports and I recommend that PERS-311 comment on the validity of the fitness report.

6. In my position as PERS-61, I was aware of the circumstances that surrounded the Navy IG investigation that resulted in reference (b). I was not personally involved but became aware of the situation at that particular command. In light of the results of reference (b), I recommend that the fitness report be removed due to racial bias in accordance with reference (c).

[REDACTED]

Director, Professional
Relationships Division
(PERS-61)



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

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1610
PERS-311
19 May 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: CDR [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
(b) DON Inspector General's letter 50441 Ser N6/1582 of 9 September 1999

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness report for the period 1 September 1998 to 23 December 1998, and replace it with two concurrent fitness reports.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. The member signed the report acknowledging the contents and his right to submit a statement. The member indicated he did desire to submit a statement. The member's statement and the reporting senior's endorsement are properly reflected in his record.

b. Commander [REDACTED] requests the removal of his fitness report because of the appearance of racial bias and discrimination. Evaluating a subordinate officer's performance and making recommendations concerning promotion and assignment are the responsibilities of the reporting senior. The duties are accomplished in the fitness report. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. We must see if there is any rational basis to support the reporting senior's decisions, and whether the reporting senior's actions were the result of improper motive. However, we must start from the position that the reporting senior exercised his/her discretion properly. Therefore, for us to recommend relief, the petitioner has to demonstrate that the reporting senior did not properly exercise his/her authority. The petitioner must show that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; she must provide evidence to support the claim. I believe Commander [REDACTED] has done so.

c. Based on reference (b), we believe the fitness report for the period 1 September 1998 to 23 December 1998 should be removed from Commander [REDACTED] record.

d. The two concurrent fitness reports provided with the member's petition are not acceptable for filing as his regular reporting senior did not countersign them.

e. The member proves the report to be unjust or in error.

3. We recommend removal of the fitness report in question.

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Head, Performance
Evaluation Branch

d. The two concurrent fitness reports provided with the member's petition are not acceptable for filing as his regular reporting senior did not countersign them. However, if the boards determines the member was subject to discrimination, we would have no objections to place the concurrent fitness reports in the member's record.

e. The member proves the report to be unjust or in error.

3. We recommend removal of the fitness report in question.



Head, Performance
Evaluation Branch

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MEMORANDUM FOR Executive Director, Board for Correction of Naval Records,
2 Navy Annex, Washington, D.C. 20374-5100

From: [REDACTED], Civilian Counsel

Date: July 26, 2000

Subj: RESPONSE TO ADVISORY OPINIONS ICO COMMANDE [REDACTED]

1. Through counsel, Commander [REDACTED] submits this response to the Advisory Opinions provided to the Board for Correction of Naval Records by the Bureau of Naval Personnel, PERS-61 and the Bureau of Naval Personnel PERS-311.
2. With regard to the Advisory Opinion provided by [REDACTED], the following information is provided. First, Commander [REDACTED] concurs with the PERS-311 Advisory Opinion to the extent that the Advisory Opinion recommends removal from his OMPF of the fitness report (and all associated documents, including his rebuttal) prepared by [REDACTED], covering the period 1 September 1998 to 23 December 1998.

a. As the PERS-311 Advisory Opinion correctly states, in order for Commander [REDACTED] obtain relief – or even a recommendation for relief from PERS-311 – he was required to:

demonstrate that the reporting senior did not properly exercise his/her authority. The petitioner must show that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; she [sic] must provide evidence to support her [sic] claim. I believe Commander [REDACTED] done so.

Second, once it has been established that Commander [REDACTED] met this high standard and demonstrated that the reporting senior acted for an illegal or improper purpose, as he has done here, the Board is required, pursuant to federal law, to provide him with “thorough and fitting relief.” [REDACTED] 1204 (Fed. Cir. 1993).

b. Commander [REDACTED] respectfully disagrees with the PERS-311 Advisory Opinion to the extent that it asserts that he should not be provided the relief requested with respect to the two concurrent fitness reports prepared on him but not countersigned and not forwarded for

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inclusion in his OMPF. [REDACTED] Commander [REDACTED] already established that the reporting senior, Captain [REDACTED] performed her reporting senior duties contrary to law, based upon the appearance in her conduct and actions that demonstrated racial bias against Afro-American officers like Commander [REDACTED]. The reporting senior duties she performed necessarily included her decision whether she would counter-sign the concurrent fitness reports submitted on Commander [REDACTED] performance by reporting seniors with close daily observation of him in Diego Garcia, a command far removed from Captain [REDACTED] place of duty. The racial bias demonstrated and proved by Commander [REDACTED] preparing the evaluation of Commander [REDACTED] contested fitness report just as clearly must have affected Captain [REDACTED] decision not to counter-sign the two concurrent fitness reports so that they could be filed in Commander [REDACTED] OMPF. Where, as here, Commander [REDACTED] is demonstrated that his reporting senior performed her duties in a manner that was illegal and improper because it was suggestive of racial bias and this proof was sufficient to occasion the recommendation for removal of the fitness report prepared by the reporting senior, the reporting senior's decision not to forward and counter-sign two fitness reports that were completely at odds with the report she prepared is equally suspect as the fitness report she personally prepared.

c. To grant Commander [REDACTED] removal of the fitness report written by Captain [REDACTED] not to grant him relief for the equally racially biased decision not to forward completely favorable fitness reports prepared by officers with first-hand observation of his performance, is to grant Commander [REDACTED] "half-a-loaf" of relief. In the absence of the two concurrent fitness reports, Commander [REDACTED] record will be absent any evaluation of his performance whatsoever during the period 1 September 1998 to 23 December 1998. In the absence of the inclusion of the two concurrent fitness reports, which were prepared in accordance with the governing BUPERS Instruction, Commander [REDACTED] will be prejudiced in his consideration for future promotion boards, boards considering him for Major Command, fellowships and positions of importance such as Military Assistants/Executive Assistants to senior military and policy leaders in the Department of the Navy and Department of Defense. Such a result is both unfair and unjust, particularly where, as here Commander [REDACTED] has established that official actions taken by his reporting senior were the product of racial bias.

d. The Board possesses the power and authority to recommend an exception to policy set forth in BUPERSINST 1610.10 where, as here, such an exception is necessary to grant "thorough and fitting relief" and to completely purge the taint of the established racial bias. In this case, Commander [REDACTED] has been the victim of racial bias at the hands of his reporting senior. He was evaluated by two competent officers who performed their evaluation duties in accordance with the governing BUPERS Instruction and in the absence of any improper bias or prejudice. In order to permit Commander [REDACTED] record to be presented fully, accurately and free of the bias he has proved, and to fully mitigate the potential future damage to his career as a result of the racial bias he suffered, Commander [REDACTED] respectfully asserts that the Board should recommend to the Secretary of the Navy that the two concurrent fitness reports prepared on Commander [REDACTED] not countersigned and forwarded to BUPERS by his reporting senior,

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and which were attached to his Application for Correction of Naval Record, be included in his Naval record.

3. With regard to the Advisory Opinion provided by PERS-61, Commander [REDACTED] agrees with the recommendation that the fitness report prepared upon him by Capt [REDACTED] be removed from his Official Military Personnel File. While Commander [REDACTED] does not agree with all of the factual statements and rationale set forth in the Advisory Opinion, he does agree with the recommendation and sees no point in non-concurring as a result. Accordingly, Commander [REDACTED] requests that the Board act in accordance with the PERS-61 recommendation for removal of the fitness report prepared by [REDACTED] covering the period 1 September 1998 to 23 December 1998.

4. In addition to the above-referenced comments on the Advisory Opinions provided by PERS-311 and PERS-61, Commander [REDACTED] requests that the Board consider an additional incident of the racial bias he suffered: Captain [REDACTED] failure to approve and forward the recommendation for the award of the Meritorious Service Medal for his performance of duties while the Commanding Officer, NAVCOMTELS [REDACTED]. A copy of the recommendation is attached hereto as an exhibit, for the consideration of the Board in deciding this request. Commander [REDACTED] respectfully asserts that the racial bias he experienced and which led to the adverse fitness report and failure to forward two concurrent fitness reports for inclusion in his Naval record also was the motivation by Capt [REDACTED] not to submit the recommendation for the award of the Meritorious Service Medal. Accordingly, Commander [REDACTED] requests that the Board recommend to the Secretary of the Navy that Commander [REDACTED] be awarded the Meritorious Service Medal for the actions contained in the accompanying award recommendation.

Respectfully submitted

[REDACTED]

Encl:
a/s